

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

BLUE HILLS OFFICE PARK LLC,)
Plaintiff/Defendant-in-Counterclaim)
)
v.) Civil Action No. 05-CV-10506 (WGY)
)
J.P. MORGAN CHASE BANK, as Trustee for)
the Registered Holders of Credit Suisse First)
Boston Mortgage Securities Corp., Commercial)
Mortgage Pass-Through Certificates, Series 1999-C1)
Defendant)
)
and CSFB 1999 – C1 ROYALL STREET, LLC)
Defendant/Plaintiff-in-Counterclaim)
)
and)
WILLIAM LANGELIER and GERALD FINEBERG)
Defendants-in-Counterclaim)
)

**OPPOSITION TO MOTION OF DEFENDANTS AND
PLAINTIFFS-IN-COUNTERCLAIM TO EXCLUDE
EXPERT TESTIMONY OF DR. KENNETH GARTRELL**

Blue Hills Office Park LLC, Gerald Fineberg and William Langelier (collectively, “Blue Hills”) hereby opposes the Motion of Defendants and Plaintiffs-in-Counterclaim to Exclude Expert Testimony of Dr. Kenneth Gartrell (“Motion to Exclude”). J.P. Morgan Chase Bank, as Trustee for the Registered Holders of Credit Suisse First Boston Mortgage Securities Corp., Commercial Mortgage Pass-Through Certificates, Series 1999-C1 (“J.P. Morgan”) and CSFB 1999 – C1 Royall Street, LLC (“CSFB”) (collectively, “Defendants”) have utterly misconstrued the pertinent legal standards governing the admissibility of expert testimony. Not only is Dr. Kenneth Gartrell (“Dr. Gartrell”) qualified to render opinions concerning, *inter alia*, the quantum of damages suffered by Blue Hills but his testimony is both reliable and relevant.

In further support of this Opposition, Blue Hills avers and asserts as follows:

1. Dr. Gartrell is amply qualified to opine as to, *inter alia*, the fair market value of the land and building thereon known as 150 Royall Street, Canton, Massachusetts (the "Property") as of the date of foreclosure, November 19, 2004, the extent of the equity in the Property lost by Blue Hills and the amount that would have had to be needed by Blue Hills to have avoided foreclosure.

2. The inquiry as to the admissibility of expert opinions is a "flexible one" and there is no particular procedure that the court need exercise in executing its gatekeeping function. *US v. Diaz*, 300 F.3d 66, 73 (1st Cir. 2002) quoting *Daubert v. Merrell Dow Pharmas., Inc.*, 509 US 579 (1993). The court should, *inter alia*, review the methodology utilized to determine "whether the reasoning or methodology underlying the testimony is scientifically valid and . . . whether the reasoning or methodology properly can be applied to the facts at issue. *Daubert*, 509 US at 592-93.

3. The methodologies utilized by Dr. Gartrell are widely accepted. In fact, the market index approach has been published in numerous professional journals and, as such, it has been subject to peer review and critical scrutiny. *Daubert*, 509 US at 593-94. Likewise, Dr. Gartrell's opinions are based on facts and data of a type reasonably relied on by experts in forming their opinions. Fed. R. Evid. 703.

Blue Hills Office Park LLC, Gerald Fineberg and William Langelier file contemporaneously herewith and incorporate herein by reference the following:

1. Memorandum of Law in Support of Opposition to Motion of Defendants and Plaintiffs-in-Counterclaim to Exclude Expert Testimony of Dr. Kenneth Gartrell; and

2. Affidavit of Bruce D. Levin in Support of Opposition to Motion of Defendants and Plaintiffs-in-Counterclaim to Exclude Expert Testimony of Dr. Kenneth Gartrell.

WHEREFORE, Blue Hills Office Park LLC, Gerald Fineberg and William Langelier respectfully demand that the Court enter an order:

1. Denying the Motion to Exclude; and
2. Providing such other and further relief as is just and proper.

Respectfully submitted,

BLUE HILLS OFFICE PARK LLC, WILLIAM
LANGELIER AND GERALD FINEBERG,
By their attorneys,

/s/ Bruce D. Levin
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and))
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WILLIAM LANGELIER and GERALD))
FINEBERG,)
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Defendants-in-Counterclaim)
)

CERTIFICATE OF SERVICE

I, Bruce D. Levin, hereby certify that I caused to be served via electronic service this 31st day of May, 2006 the **Opposition to Motion of Defendants and Plaintiffs-in-Counterclaim to Exclude Expert Testimony of Dr. Kenneth Gartrell** upon Bruce S. Barnett, Esquire, Traci S. Feit, Esquire, E. Randolph Tucker, Esquire, Bruce E. Falby, Esquire, DLA Piper Rudnick Gray Cary US LLP, 33 Arch Street, 26th Floor, Boston, Massachusetts 02110.

/s/ Bruce D. Levin
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